

Expedited Rescission Bills in the 111th and 112th Congresses: Comparisons and Issues

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Summary

Under the framework established by the Impoundment Control Act (ICA) of 1974 (P.L. 93-344, 88 Stat. 297), the President may propose to rescind funding provided in an appropriations act by transmitting a special message to Congress and obtaining the support of both houses within 45 days of continuous session. If denied congressional approval during this time period, either by Congress ignoring the presidential rescission request or because one or both houses rejected the proposed rescission, the President must make the funding available to executive agencies for obligation and expenditure.

Instead of allowing Congress to ignore presidential recommendations for rescissions, “expedited rescission” attempts to require congressional consideration of the rescission and a vote by at least one house on the proposals. If either house disapproves the request, the other house need take no action because approval by both houses is necessary to make the rescission permanent. This approach has attracted support over the years, including several bills introduced in the 111th Congress. On May 24, 2010, President Obama sent to Congress the Reduce Unnecessary Spending Act of 2010, a draft bill providing for expedited rescission procedures, which was introduced in the 111th Congress as H.R. 5454 and S. 3474. Hearings on expedited rescission proposals were held in both chambers during the 111th Congress.

On January 25, 2011, Senator McCain, along with Senator Carper and 21 other original cosponsors, introduced S. 102, the Reduce Unnecessary Spending Act of 2011, which is virtually identical to S. 3474 from the 111th Congress, and a related hearing by a Senate subcommittee was held on March 15, 2011. On March 11, 2011, Congressman Van Hollen with 26 cosponsors introduced H.R. 1043, which is virtually identical to H.R. 5454 from the 111th Congress and very similar to S. 102. The two measures pending in the 112th Congress would amend the ICA of 1974 to provide an expedited process for consideration of certain rescission requests from the President. Within 45 days after signing a bill into law, the President would be able to submit a package of rescissions for reducing or eliminating discretionary appropriations or non-entitlement non-appropriated funding contained in the bill as enacted. Such proposed rescissions from the President would be considered as a group and would be subject to expedited procedures in Congress, designed to make an up-or-down vote on the package more likely.

A variety of issues related to expedited rescission measures that may prove of possible interest to Congress are noted in the report. Under the rubric of budgetary savings, some existing data suggest that enactment of expedited rescission authority for the President would have a relatively small impact on federal spending. Supporters acknowledge that expedited rescission would not be a panacea for deficit reduction, but that it would provide another useful tool for promoting fiscal discipline. The potential deterrent effect of the instrument has also been noted. The possible savings to be realized from expedited rescission depends on the breadth of coverage. In a rescission package subject to expedited congressional consideration, would the President be able to include any item of discretionary spending, and what about new items of direct (mandatory) spending? Would limited tax benefits be subject to cancellation under expedited rescission procedures? Other issues come under the subject of prerogatives of the legislative and the executive branches. Would the expedited procedures result in a President’s spending priorities getting preference over those enacted by Congress? What about implications for relations between the President and Congress, with particular concern about the power of the purse?

This report will be updated as events warrant.

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Background

The Impoundment Control Act (ICA), enacted as Title X of the Congressional Budget and Impoundment Control Act of 1974, established a new framework for congressional notification and review of rescissions requested by a President.¹ The 1974 law requires the President to inform Congress of all proposed rescissions in a special message, containing specified information on each proposed rescission. With regard to congressional oversight of presidential rescissions, the ICA provides that the funds must be made available for obligation unless both houses of Congress take action to approve a rescission request included in the message received from the President within 45 days of “continuous session”; days in which either chamber is in recess for more than three days are not counted.²

In contrast, “enhanced rescission,” briefly available under the Line Item Veto Act (LIVA) of 1996,³ altered the rescission framework to create a presumption favoring the President.⁴ Under enhanced rescission, spending reductions identified in special presidential messages remain permanently cancelled unless Congress enacts a disapproval bill. Should the President veto that disapproval bill, a two-thirds majority in both chambers would be needed to override the veto.

As an alternative, “expedited rescission,” instead of allowing Congress to ignore presidential recommendations for rescissions, facilitates congressional consideration of the rescission messages and an up-or-down vote by at least one house on the President’s proposals. If either house disapproves the request, the other house need take no action because approval by both houses is necessary to make the rescission permanent.

Expedited rescission bills focus on procedural changes in Congress and typically contain a detailed schedule to ensure immediate introduction of a measure to approve the President’s rescission request, prompt reporting by committee or automatic discharge, special limits on floor amendments and debate, and so on. Under expedited rescission, congressional approval is still necessary to rescind the funding, but the fast-track procedures may help to encourage an up-or-down vote on the President’s proposal.

The expedited rescission approach has attracted support over the years, because it is generally regarded as transferring less power from Congress to the President than most other approaches that would modify the ICA framework.⁵ In 1992, 1993, and 1994, the House passed an expedited

¹ P.L. 93-344, 88 Stat. 332. A rescission constitutes the permanent cancellation of designated budget authority that was previously appropriated.

² The continuity of a congressional session is considered broken by an adjournment of the Congress sine die, and by the days on which either chamber is in adjournment for more than three days to a date certain (ICA, section 1011(5)). In practice, this usually means that funds proposed for rescission not approved by Congress must be made available for obligation after about 60 calendar days, although the period can extend to 75 days or longer.

³ P.L. 104-130, 110 Stat.1200.

⁴ The Supreme Court found the LIVA unconstitutional in *Clinton v. City of New York*, rendered June 25, 1998, 524 U.S. 417 (1998).

⁵For further discussion of bills that sought to amend the ICA framework to have granted expanded rescission authority to the President including their legislative histories, see CRS Report RL33635, *Item Veto and Expanded Impoundment Proposals: History and Current Status*, by Virginia A. McMurtry.

rescission bill each year.⁶ More recently, in the 109th Congress the House passed H.R. 4890, the Legislative Line Item Veto Act, as amended, on June 22, 2006.⁷

Expedited Rescission Proposals in the 112th Congress

On January 25, 2011, Senator McCain, along with Senator Carper and 21 other original cosponsors, introduced S. 102, the Reduce Unnecessary Spending Act of 2011, which incorporates the Administration's expedited rescission proposal from 2010 and is virtually identical to S. 3474 from the 111th Congress. On March 11, 2011, Congressman Van Hollen introduced a companion bill (by request) as H.R. 1043, with the same title, but which has two slight differences from the Senate bills and is virtually identical to H.R. 5454 in the 111th Congress. These measures would amend the ICA of 1974 to provide an expedited process for consideration of certain rescission requests from the President. Within 45 days after signing a bill into law, the President would be able to submit a package of rescissions for reducing or eliminating discretionary appropriations or non-entitlement non-appropriated funding contained in the bill as enacted. Such proposed rescissions from the President would be considered as a group and would be subject to expedited procedures in Congress, designed to make an up-or-down vote on the package more likely. More detailed consideration of these bills, along with some other expedited rescission measures from the 111th Congress, is provided in the following section.

President Obama sent his budget submission for FY2012 to Congress on February 7, 2011. As was the case with his previous two budgets, President Obama endorsed various proposals for reforming the budget process, including an expedited process for considering rescission requests (exemplified in S. 102 and H.R. 1043). The discussion accompanying the FY2012 submission stated, "In sum, the [expedited rescission] proposal provides the President with important, but limited powers that will allow the President and Congress to work together more effectively to eliminate unnecessary funding."⁸

On March 15, 2011, the Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, held a hearing titled "Enhancing the President's Authority to Eliminate Wasteful Spending and Reduce the Budget Deficit." Four witnesses testified, including two from the Congressional Research Service at the Library of Congress and two from private sector entities.⁹

⁶ For further discussion of efforts to grant the President expanded impoundment authority and of related floor votes, see CRS Report RL30223, *Presidential Rescission Authority: Efforts to Modify the 1974 Framework*, by Virginia A. McMurtry.

⁷ "Legislative Line Item Veto Act of 2006," House debate, *Congressional Record*, daily edition, vol. 152 (June 22, 2006), pp. H4433-H4441 and H4467-H4493. As introduced, H.R. 4890 was based on a draft bill transmitted by the Bush Administration on March 6, 2006.

⁸ Office of Management and Budget, *Fiscal Year 2012 Analytical Perspectives, Budget of the U.S. Government*, Washington, DC: GPO, 2011, pp. 156-157.

⁹ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, *Enhancing the President's Authority to Eliminate Wasteful Spending and Reduce the Budget Deficit*, hearing, 112th Cong., 1st sess., March 15, 2011. Witnesses from CRS included Virginia McMurtry and Todd Tatelman; Maya MacGuineas, President, Committee for a Responsible Federal Budget; and Thomas Schatz, President, Citizens Against Government Waste. Statements are available at the Homeland Security and Governmental Affairs Committee website:

Later in this report, some possible issues for Congress relating to expedited rescission authority for the President are identified and examined under the two rubrics of budgetary savings and respective prerogatives of the President and Congress. At the March hearing in the Senate, such issues were considered. The witnesses seemed to concur that while budgetary savings to be achieved with expedited rescission might be relatively modest,¹⁰ the mechanism still may prove helpful in deficit reduction efforts. For example, Senator Carper stated in his opening remarks that while expedited rescission authority “is not a silver bullet or a magic solution to our fiscal problems,” the approach “may well prove to be a useful tool in our toolbox.”¹¹ The witness from the Committee for a Responsible Federal Budget suggested that expedited rescission authority for the President might “increase [congressional] accountability and serve as a deterrent to Members for adding low-priority spending that is likely to be included in a Presidential rescissions package.”¹²

There likewise appeared to be some consensus among the witnesses and Members present that S. 102 would not encounter the same constitutional problems cited by the Supreme Court in its decision striking down the 1996 Line Item Veto Act.¹³ The witnesses and most Members present at the hearing also tended to agree that providing expedited rescission authority for the President would not lead to any enhancement of power for the executive branch. Senator Carl Levin, however, indicated that he “couldn’t disagree more” with this assessment. According to the Senator, expedited rescission would give the President additional power to advance his rescission proposals, particularly in the Senate. In the Senator’s view, the expedited procedures in S. 102 that would mandate an up-or-down vote on a rescission package, without any amendments, without motions to table, and with very limited time for debate, embodied procedural restrictions not often employed in the Senate, and would unduly advantage passage of the Administration’s rescission package in comparison to alternative rescission measures.¹⁴

http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=8cf2de4b-4c39-46aa-8ee4-7c7262a0783e.

¹⁰ During more than three decades that the President’s rescission authority as provided in the Impoundment Control Act of 1974 has been available, according to the Government Accountability Office, the total amount of rescissions requested by the President and subsequently enacted exceeded \$1 billion in only four years. See statement of Virginia McMurtry, p. 2.

¹¹ Hearing held March 15, 2011. Statement available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=97d084c1-654a-4469-9e97-89023c0c6cdd.

¹² March 15, 2011, hearing statement of Maya Macguineas, pp. 3-4.

¹³ *New York v. Clinton*, 524 U.S. 417 (1998). This 6-3 decision held that the authority provided in the Line Item Veto Act to cancel provisions of enacted law violated the Presentment Clause found in Article I, § 7, which requires that a measure pass both chambers and be presented to the President for approval or veto. See statement by Todd Tatelman, pp. 4, 11.

¹⁴ The Committee provided a webcast of the hearing the hearing, available at <http://www.senate.gov/fplayers/I2009/urlPlayer.cfm?fn=govtaff031511&st=615&dur=7740>. The C-span video library also offers access to the same webcast, available at <http://www.c-spanvideo.org/program/Wastefu&showFullAbstract=1>. This version features the convenient capability to “fast forward” through the hearing; Senator Levin’s remarks commence around the one hour thirty minutes point in the webcast.

Expedited Rescission Proposals in the 111th Congress

On March 4, 2009, the Congressional Accountability and Line-Item Veto Act was reintroduced in the 111th Congress. In the Senate, S. 524 was cosponsored by Senators Feingold and McCain, and in the House H.R. 1294 was introduced by Representatives Paul Ryan and Mark Kirk. Senator Gregg and cosponsor Senator Lieberman introduced S. 640, the Second Look at Wasteful Spending Act of 2009, on March 19, 2009. S. 640 was similar to a bill in the 109th Congress, S. 3521 (Title I) as reported by the Senate Budget Committee in 2006 (then chaired by Senator Gregg). Senator Carper, along with 20 cosponsors, introduced S. 907, the “Budget Enforcement Legislative Tool Act of 2009,” on April 28, 2009.¹⁵

The Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, on December 16, 2009, held a hearing on “Tools to Combat Deficits and Waste: Expedited Rescission Authority,” and considered S. 524, S. 640, and S. 907.¹⁶ The Senate Judiciary Subcommittee on the Constitution held a hearing on May 25, 2010, focusing on “The Legality and Efficacy of Line-Item Veto Proposals,” with reference to the three expedited rescission measures pending in the Senate and the proposal from the Administration, later introduced as S. 3474 (see below).

On May 24, 2010, President Obama transmitted an Administration draft bill providing for expedited rescission procedures to Congress, called the Reduce Unnecessary Spending Act of 2010. As discussed already, slightly differing versions of the measure have been reintroduced in the 112th Congress as S. 102 and H.R. 1043. The proposal would provide expedited rescission procedures for consideration of certain requests from the President. Within 45 days after signing a bill into law, the President would be able to submit a package of rescissions for reducing or eliminating discretionary appropriations or non-entitlement mandatory spending contained in the bill as enrolled. The measures provide that certain proposed rescissions from the President would be considered as a group and would be subject to expedited procedures in Congress, designed to ensure an up-or-down vote on the package. On May 28, 2010, the Administration proposal was introduced as H.R. 5454 by Representative Spratt. On June 9, 2010, Senator Feingold introduced S. 3474, with two changes from the Administration draft, as discussed below.

Expedited rescission proposals received notable attention, but varied levels of support in the 111th Congress. The hearings in the Senate by the Subcommittee on Financial Management and by the Subcommittee on the Constitution were both chaired by proponents of pending measures—Senator Carper and Senator Feingold. Both hearings were predominantly favorable in their treatment of an expedited process for certain rescissions requested by the President.

On June 17, 2010, the House Budget Committee held a hearing focused explicitly on the “Administration’s Expedited Rescission Proposal.” The sole witness was the Acting Deputy Director of the Office of Management and budget (OMB), Dr. Jeffrey Liebman. This hearing revealed differences of opinion among Members present regarding the expedited rescission bills under consideration. Some voiced opposition to the basic approach, viewing it as disadvantageous

¹⁵ This bill is similar to one introduced in the 102nd Congress (H.R. 2164) by then Representative Carper with over 200 cosponsors. See “Expedited Consideration of Proposed Rescissions Act of 1991,” House floor action, *Congressional Record*, vol. 138, part 21 (October 3, 1992), pp. 3015-3016.

¹⁶ For statements at the hearing, see links from http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=34e3c205-9016-4269-be41-a27ec7e90a8c.

to Congress in relation to the President. On the other hand, the ranking member offered strong support for expedited rescission generally, as did others from the majority side. As described in a news article, “The [Administration’s] proposal received a mixed response from [Budget] panel lawmakers, who are notoriously protective of preserving their constitutional spending powers.”¹⁷ The OMB witness provided an upbeat view, stating, “I am encouraged that the Administration’s proposal has received bipartisan and bicameral support.... We applaud these efforts, and look forward to working with Congress to hammer out the details and enact this authority into law.”

Representative Spratt, former chairman of the Budget Committee, had been a supporter of the expedited rescission approach for many years and introduced H.R. 5454 by request.¹⁸ He nonetheless raised a number of concerns during the Budget Committee hearing. For example, he questioned whether a 45-day period for executive branch review of spending measures might be too long. Dr. Liebman explained that OMB’s major concern was the prospect of an omnibus bill being passed in mid-December with some staff away for the holidays and time pressure for final decisions on the President’s upcoming budget submission to Congress in early February, but OMB could probably agree to a shorter window for submitting rescission packages for a regular appropriations law. The chairman also expressed concern that the Member who had “sponsored” an item contained in the rescission package would be guaranteed a minimum time allotment during floor debate to defend and justify the provision. Representative Spratt, on the other hand, expressed pleasure with cosponsors of H.R. 5454 that “span the Democratic [Party] spectrum” and stated, “I look forward to working with all interested parties as we consider ways to improve this bill and move it through Congress.”¹⁹

Several other measures in the 111th Congress would have established expedited rescission procedures, including H.R. 1294 (companion to S. 524), H.R. 1390, H.R. 4921 (companion to S. 907), and S. 3423. Other bills would have provided for expedited rescission along with various other budget process reforms, such as increased earmark accountability or spending controls. In the 111th Congress, H.R. 3268, H.R. 3964, S. 1808, and S. 3026 provided examples of such omnibus budget process bills.²⁰

None of the expedited rescission measures received further action in the 111th Congress.

Comparing Provisions in Expedited Rescission Bills

The following analysis provides a comparative overview of some major features in the three Senate measures considered in hearings in the 111th Congress along with House companion bills

¹⁷ Robert Brodsky, “White House makes case for authority to perform spending surgery,” *Government Executive*, June 17, 2010, online version at http://www.govexec.com/story_page_pf.cfm?articleid=45519&printerfriendlyvers=1.

¹⁸ Congressman Spratt did not, however, support H.R. 4890, the Legislative Line Item Veto Act, as amended, passed by the House on June 22, 2006. While the bill as reported was “an improved version of the bill as originally filed,” the Democrats on the House Budget Committee considered that H.R. 4890, as amended, “cedes too much power to the President, and we think that these powers could still be pared back, so that the risk of abuse or manipulation is reduced. We’re not opposed to a properly crafted, limited expedited rescission legislation as one part of a tool kit that will bring the budget under control.” U.S. Congress, House Committee on the Budget, *Legislative Line Item Veto Act of 2006*, report to accompany H.R. 4890, 109th Cong., 2nd sess., June 16, 2006, H.Rept. 109-505, part 1 (Washington: GPO, 2006), pp. 102-103.

¹⁹ “Spratt Introduces Obama Administration’s Expedited Rescission Bill,” News Release by the House Budget Committee, May 24, 2010, available on the Minority (Democratic) website, <http://democrats.budget.house.gov/PRArticle.aspx?NewsID=1757>.

²⁰ For more information on these bills, see CRS Report RL33635, *Item Veto and Expanded Impoundment Proposals: History and Current Status*.

(S. 524/H.R. 1294, S. 640, and S. 907/H.R. 4921). The Obama Administration's bill, introduced in the 112th Congress as S. 102 and H.R. 1043, is also featured in the table. It was previously introduced in the 111th Congress as H.R. 5454 and S. 3474. Two modifications appearing in the Senate bills have been noted in the table and would affect the deadline for submission of special rescission messages by the President and the disposition for any savings realized.

All of the measures featured in **Table 1** would share a similar purpose of establishing expedited procedures in Congress for the consideration of certain rescission proposals by the President by amending the ICA to add the new features.

As described above, under the framework established by the ICA, the President may propose to rescind funding provided in an appropriations act by transmitting a special message to Congress and obtaining the support of both houses within 45 days of continuous session. If denied congressional approval²¹ during this time period, either by Congress ignoring the presidential rescission request or by one or both houses rejecting the proposed rescission, the President must make the funding available to executive agencies for obligation and expenditure.

While all four bills would have amended the ICA, the changes to the ICA contained in S. 524 would have been the most extensive. S. 524 would have amended Title X of the ICA by striking all of the existing Part B, "Congressional Consideration of Proposed Rescissions, Reservations, and Deferrals of Budget Authority," with the exceptions of Sections 1016 (regarding suits by the Comptroller General) and 1013 (pertaining to deferral authority of the President), and likewise striking all of Title X, Part C, which contains the Line Item Veto Act of 1996 (P.L. 93-344), overturned by the Supreme Court in 1998.²² In lieu of these deletions, the provisions of S. 524 would have been added to Title X. Some of the provisions in S. 524 would have directly replaced a deleted section, such as that containing definitions.

Three existing sections of Title X, Part B, however, would have been eliminated outright in S. 524, including Section 1014, providing for the transmission of messages from the President to Congress and to the Comptroller General and for publication of messages in the *Federal Register*; and Section 1015, providing for review of rescission and deferral actions and reporting to the Congress by the Comptroller General. Deletion of these sections might well have decreased transparency in the rescission process. Arguably the most significant of the deletions in Part B would have been Section 1012, containing the original provisions for rescission of budget authority; henceforth the President would be limited to submitting rescission requests under the expedited procedures.

In contrast, S. 640 would have retained Title X, Parts A and B as is, but struck Part C (in effect, deleting the LIVA provisions), and would have added the text of the expedited rescission bill, which would have become the "new" Part C. Provisions found in S. 907 would have inserted the text of the act with its expedited rescission procedures immediately after existing Part B, Section 1012 (original rescission provisions) and then would have redesignated Sections 1013-1017 as Sections 1014-101. Like S. 640, S. 3474 would have deleted Part C and replaced it with the bill language, but S. 3474 would also have added clarifying amendments to Part A (containing general provisions). In brief, while S. 524 would have replaced existing provisions in the ICA with those in the new act, S. 640, S. 907, and S. 3474 would have provided the new expedited rescission authority in addition to the existing ICA provisions.

²¹ It is relevant to note that under the ICA Congress may approve all or only a portion of the amount requested for a given rescission. When the President includes multiple requests in a single special message, Congress may decide to include only selected rescission proposals in the approval measure.

²² *Clinton v. City of New York*, 524 U.S. 417 (1998).

As shown in **Table 1**, the bills differed in the scope of new authority that would have been granted to the President. Under S. 524, special messages from the President could have proposed rescission of any congressional earmarks, as well as cancellation of certain limited tax and tariff benefits. In S. 907, the purview of expedited rescission authority would have applied solely to amounts of discretionary budget authority and could not have exceeded 25% of the total appropriated for any authorized programs. Under the Administration bill the President could propose to rescind any new budget authority or non-appropriated mandatory spending except for entitlements.²³ The scope of the new expedited rescission authority in S. 640, arguably the most far reaching, would have covered entire amounts of discretionary budget authority in appropriations acts or represented separately in committee reports, certain limited tax benefits, and new items of direct spending, meaning budget authority provided in other than appropriations acts, mandatory spending provided in appropriations acts, and entitlement authority.

The proposed deadlines for the President to submit special rescission or cancellation messages following enactment of a relevant measure varied considerably, according to the data in **Table 1**. S. 907 would have allowed 3 days, S. 524 would have allowed 30 days, S. 3474 would have allowed 45 days, while S. 640 would have allowed one year. Note that H.R. 1043 and S. 102 differ with regard to deadlines. The original Administration language would be retained in H.R. 1043, 30 days of congressional session,²⁴ whereas S. 102 would revise the window to 45 calendar days, the latter period generally expected to have fewer days.

Regarding limits on the number of special messages permitted the President when using the expedited rescission authority, S. 524 would have provided for a limit of one special message for each regular act and two for an omnibus budget reconciliation or appropriation measure. Similarly, S. 102 would allow one special message per regular appropriations act and two messages for a continuing resolution, supplemental measure, or omnibus measure. S. 640 would have permitted up to a total of four special messages in a calendar year, including one submitted with the President's budget. S. 907 would have allowed one message per act unless the act included appropriations accounts under the jurisdiction of more than one appropriations subcommittee; in the latter case, the President would have transmitted a special message and approval bill for each subcommittee involved. None of the bills would have allowed the President to propose duplicative proposals for rescinding the same funds.

Some provisions were unique to one measure, as depicted in **Table 1**. For example, only S. 524 contained a sense of the Congress provision regarding abuse of the proposed cancellation authority by the President or other executive branch official vis-a-vis a Member of Congress. These provisions paralleled language in the House-passed version of expedited rescission in the 109th Congress (H.R. 4890).

Other types of provisions appeared, not necessarily in the same form, in more than one of the bills. For example, S. 524 and S. 640 and S. 102 (in a modification from the Administration draft) stipulate that any amounts rescinded or cancelled would have been or would be dedicated only to reducing the deficit or increasing a surplus, whereas explicit provisions for using any savings for deficit reduction were not found in S. 907. On the other hand, H.R. 1043, retaining the language

²³ As explained by OMB, "non-entitlement mandatory spending" typically exists when an agency is authorized to spend the "proceeds of fees or other offsetting collections to run the agency." Such spending "is generally indistinguishable from other funding for administering the government that is typically provided through discretionary appropriations." *Fiscal Year 2012 Analytical Perspectives*, p. 156.

²⁴ "Days of session" would be calculated by excluding weekends and national holidays; any day during which a chamber is not in session would not be counted as a day or session of that chamber, nor would a day when neither chamber is in session be counted as a day of session of Congress. H.R. 5454, § 1022 (3).

in the Administration draft, stipulates that any funds rescinded under parts B or C would revert back to the fund from whence they came, rather than being used for purposes of deficit reduction.

All of the bills mandated expedited or fast-track procedures²⁵ for committee action and floor consideration which do not allow for amendments, but the Administration bill (S. 102/H.R. 1043) show three differences “from other fast-track no-amendment procedures that exist or have existed in recent decades.”²⁶ First, the House clerk, when turning the rescission package into a bill, would omit individual rescissions “that are not eligible for the fast-track procedure,” as determined by the chairman of the House Budget Committee, following required consultations. Examples of impermissible rescissions would include a request to rescind funding from an entitlement program or from some other bill besides the recently enacted funding bill covered in the special message. A second new feature would allow any Member, during floor consideration of the approval bill in the House, to “raise a point of order against any numbered rescission in the package on the grounds that it contains impermissible matter, and if the point of order is sustained, the item is automatically knocked out of the package.” The third innovation would allow any Senator likewise to raise a point of order “claiming that the House-passed package contains impermissible matter.” If sustained, the package would not be altered but the approval bill would immediately lose the fast-track protections and would become subject to standard Senate rules.²⁷

The President’s authority to temporarily withhold funds proposed for rescission was directly addressed in three of the measures. S. 524 and S. 640 would have allowed withholding of such funds for a period not to exceed 45 calendar days from the transmittal or receipt of the President’s special message, whereas S. 102 would allow withholding for a period not to exceed 25 calendar days in which the House or Senate had been in session. In comparison, the ICA currently allows the withholding of amounts proposed for rescission for 45 calendar days of continuous session of Congress, which would almost always constitute a longer period of time than that provided in any of the three aforementioned provisions in expedited rescission bills. In S. 907, as in the ICA, there was a “Requirement to Make Available for Obligation” section. The ICA requires the release of funds included in a special rescission message unless Congress completes action on a rescission bill within the prescribed 45-day period. On the other hand, S. 907 would have required that funds proposed in a special message be released on the day following defeat of the approval measure in either chamber, which arguably creates an incentive for congressional action on a proposed rescission package beyond the framework of expedited procedures.

Finally, all the bills had or have sunset provisions. Authority in S. 640 would have expired on December 31, 2010,²⁸ in S. 907, on the date in 2012 when Congress adjourns sine die, and in S. 524, on December 31, 2014. Expedited rescission authority in the 112th Congress bills would continue until December 31, 2014.

²⁵ Congress may adopt special fast-track procedures to promote timely committee and floor action on designated types of measures. In contrast, the regular legislative process can move slowly with no guarantee of a bill receiving prompt (or even any) consideration in committee and on the floor. See CRS Report RS20234, *Expedited or “Fast-Track” Legislative Procedures*, by Christopher M. Davis.

²⁶ Section-by-Section Analysis and Explanation of the “Reduce Unnecessary Spending Act of 2010,” included with the Administration’s draft bill transmitted to Congress May 24, 2010, http://www.whitehouse.gov/omb/assets/blog/Unnecessary_Spending_Act.pdf.

²⁷ *Ibid.*, pp.4-5.

²⁸ As noted already, S. 640 is very similar to S. 3521 in the 109th Congress (introduced on June 15, 2006) which would have expired four years later (also on December 31, 2010). Apparently, the original sunset date was inadvertently retained in the 111th Congress bill.

Table I. Comparison of Selected Provisions in Some Expedited Rescission Bills, 111th and 112th Congresses

Nature of provision	S. 524/H.R. 1294, 111 th	S. 907/H.R. 4921, 111 th	S. 640, 111 th	S. 102/H.R. 1043, 112 th
Purpose of bill	To provide for the expedited consideration of certain proposed rescissions of budget authority.	To establish procedures for the expedited consideration by Congress of certain proposals by the President to rescind amounts of budget authority.	To provide Congress a second look at wasteful spending by establishing enhanced rescission authority under fast-track provisions.	To establish an optional fast-track procedure the President may use when submitting certain rescission requests to Congress, leading to an up-or-down vote by Congress on the package.
Short Title	Congressional Accountability and Line-Item Veto Act of 2009	Budget Enforcement Legislative Tool Act of 2009	Second Look at Wasteful Spending Act of 2009	Reduce Unnecessary Spending Act of 2011
Sponsors	Sens. Feingold and McCain/ Reps. Paul Ryan and Mark Kirk	Sen. Carper et al./ Rep. Minnick et al.	Sens. Gregg and Lieberman	Sen. McCain et al./ Rep. Van Hollen et al.
Relationship to Impoundment Control Act (known as ICA, Title X of P.L. 93-344)	Title X amended by striking all of Part B (except for Sections 1016 and 1013, redesignated as Sections 1019 and 1020) and all of Part C, and inserting text of this act.	Title X amended by redesignating sections 1013 through 1017 as sections 1014 through 1018, and inserting text of this act after section 1012.	Title X amended by striking Part C (containing Line Item Veto Act of 1996) and inserting text of this act.	Title X amended by striking Part C (containing Line Item Veto Act of 1996) in its entirety, and replacing it with text of this act, creating a new Part C with six sections. Also clarifying amendments to Part A.
President may propose to rescind discretionary budget authority	Yes, any congressional earmark (same definition as included in P.L. 110-81).	Yes, entire amounts in appropriations acts or represented separately in managers' statement, committee reports, et al. Not more than 25 percent of the amount appropriated for an authorized program, project or activity for a fiscal year may be proposed for rescission.	Yes, amounts in appropriations acts or represented separately in managers' statement, committee reports, et al.	Yes, any new budget authority or obligation limits in legislation that provides funding except to the extent that the funding is provided for an entitlement law.
President may propose to cancel limited tax benefits	Yes, any revenue-losing provision affecting a particular or limited group of taxpayers. Chairmen of Ways and Means and Finance Committees to identify such provisions.	Not addressed.	Yes, any revenue-losing provision affecting a particular or limited group of taxpayers.	Not addressed.

Nature of provision	S. 524/H.R. 1294, 111th	S. 907/H.R. 4921, 111th	S. 640, 111th	S. 102/H.R. 1043, 112th
President may propose to cancel limited tariff benefit	Yes, any provision of law that modifies the U.S. tariff schedule so as to benefit 10 or less entities.	Not addressed.	Not addressed.	Not addressed.
President may propose to modify/rescind direct (mandatory) spending	Not addressed.	Not addressed.	Yes, any new items of direct spending, meaning budget authority provided by law other than appropriations acts, mandatory spending provided in appropriations acts, and entitlement authority.	Yes, new budget authority and obligation limits except to the extent that the funding is provided for entitlement law.
Deadline for submission of special rescission or cancellation messages	Within 30 calendar days of enactment of law (1) containing any congressional earmark, or providing (2) any limited tariff benefit or (3) any targeted tax benefit.	Within three days of enactment of appropriations law containing any amount of discretionary budget authority.	Within one year of the date of enactment of (1) any discretionary budget authority, (2) new direct spending, or (3) targeted tax benefit.	H.R. 1043: Within 45 days of congressional session after the date of enactment for the funding. S. 102: Within 45 calendar days....
Coverage of special rescission or cancellation message	Limit of one special message for each regular act and two messages for an omnibus budget reconciliation or appropriation measure.	One special message per act, unless act includes accounts overseen by more than one appropriations subcommittee. Then separate special messages to be prepared for each subcommittee involved.	Limit of four special messages per calendar year. One may be submitted with President's budget and up to three at other times. No restriction on combining the three types of cancellations in the same message.	Limit of one special message for each regular appropriations act and two messages for a continuing resolution, supplemental or omnibus appropriations bill.
Serial (duplicate) rescission requests possible	No, submission of duplicative proposals in messages is prohibited.	No, submission of funds proposed for rescission under section 1013 may not be resubmitted either under section 1013 or section 1012.	No, resubmittal of any of the dollar amounts of discretionary budget authority, items of direct spending, or targeted tax benefits previously rejected by Congress is not allowed.	Not under the expedited procedures, but perhaps a second request allowable under the original ICA rescission framework, in Title X, part B.
Introduction of rescission approval bill	Chamber leadership to introduce approval bill within three days of receiving message, or thereafter any Member may introduce approval bill.	Chamber leadership to introduce approval bill within two days of receiving message, or thereafter any Member may introduce approval bill.	Chamber leadership to introduce approval bill within two days of receiving message, or thereafter any Member may introduce approval bill.	House leadership to introduce approval bill within four days of House session after receiving message, or thereafter any Member of the House.

Nature of provision	S. 524/H.R. 1294, 111 th	S. 907/H.R. 4921, 111 th	S. 640, 111 th	S. 102/H.R. 1043, 112 th
Content of approval bill	The term “approval bill” means a bill or joint resolution which only approves proposed repeals of congressional earmarks or cancellation of limited tariff benefits or targeted tax benefits in a special message from President.	Each special message to include an accompanying bill or joint resolution that, if enacted, would only rescind that discretionary budget authority.	Each special message to include an accompanying draft bill that, if enacted, would rescind the budget authority, items of direct spending and targeted tax benefits proposed to be rescinded.	House clerk converts the rescission package into a bill by listing items in the President’s package by number and stating their enactment, but omitting individual rescissions ineligible for fast track procedures.
Fast-track provisions for committee action	Committee to report measure without amendment to the chamber by seventh day after receipt, or be automatically discharged.	Committee to report measure without substantive revision and with or without recommendation to the chamber by seventh day after receipt, or be automatically discharged.	Committee to report bill without any revision and with a favorable, unfavorable or without recommendation to the chamber by the fifth day after receipt, or be automatically discharged.	Committee to report bill without any revision and with a favorable, unfavorable or without recommendation to the House by the fifth day after receipt, or be automatically discharged.
Fast-track provisions limiting debate during floor consideration	Yes, debate on measure not to exceed five hours in the House and ten hours in Senate. Vote on final passage to occur by 10 th day after introduction.	Yes, debate on measure not to exceed four hours in House and 10 hours in Senate. Debate in Senate on any motion or appeal in connection with the approval bill not to exceed one hour. Vote on final passage to occur by 10th day after introduction.	Yes, debate on bill not to exceed four hours in House and 10 hours in Senate. Debate in Senate on any motion or appeal in connection with the approval bill not to exceed one hour. Floor vote must occur within 10 days after introduction of bill.	Yes, four hours of debate allowed in House, as well as one motion to further limit debate. Debate in Senate on approval bill not to exceed 10 hours and on any motion or appeal in connection with the approval bill not to exceed one hour. Special provisions regarding motion to proceed in House. Absent a motion to proceed, after five calendar days of legislative session have passed since approval bill was reported or discharged, the bill to be removed from the calendar.

Nature of provision	S. 524/H.R. 1294, 111 th	S. 907/H.R. 4921, 111 th	S. 640, 111 th	S. 102/H.R. 1043, 112 th
Other fast-track provisions affecting floor consideration.	All points of order in the House against an approval bill or its consideration are waived. No amendment to or motion to strike a provision from an approval bill is in order in either chamber.	In House motion to proceed highly privileged and not debatable. Amendment to the motion or to reconsider the vote not in order. Appeals to be decided without debate. Similar limitations in the Senate. Amendments to the approval bill prohibited in both chambers.	In House motion to proceed highly privileged and not debatable. Amendment to the motion or to reconsider the vote not in order. Appeals to be decided without debate. Consideration of approval bill under suspension or a special rule prohibited with similar limitations in the Senate. Also includes provisions for expedited procedure in conference committee.	Point of order allowed by any House member against any numbered rescission in the approval bill on grounds that it contains impermissible matter. Point of order allowed by any Senator, claiming that the House-passed package contains impermissible matter. If sustained, further consideration of bill no longer governed by special expedited procedures.
Savings must be used for deficit reduction	Yes, amounts rescinded or cancelled to be dedicated only to reducing the deficit or increasing a surplus. Provisions for adjustment of committee allocations and budgetary caps. Any amounts cancelled which came from trust or special funds would return to original fund rather than the general fund.	Not addressed.	Yes, amounts rescinded to be dedicated only to deficit reduction and not be used as an offset for other spending increases. Provisions for adjustment of committee allocations and budgetary caps.	S. 102: Yes, funds rescinded to be dedicated only to reducing the deficit or increasing the general fund. Provisions for adjustment of committee allocations and budgetary caps. H.R. 1043: No, if funding is rescinded under parts B or C, the rescinded funds revert back to the fund from whence they came (general fund, trust fund, etc.).
President may withhold spending or implementation of proposed cancellations.	Yes, for a period not to exceed 45 calendar days from the transmittal of the special message, President may withhold budget authority for earmarks, or suspend implementation of limited tariff benefits or tax benefits proposed for cancellation.	Not addressed.	Yes, for a period not to exceed 45 calendar days from receipt of the special message, President may withhold discretionary budget authority, and suspend execution of any item of new direct spending or targeted tax benefit proposed for cancellation. Period modified if item of direct spending or targeted tax benefit is already in force prior to the proposed cancellation.	Yes, for a period not to exceed 25 calendar days in which the House or Senate has been in session (whichever occurs later) following transmittal of special message.

Nature of provision	S. 524/H.R. 1294, 111 th	S. 907/H.R. 4921, 111 th	S. 640, 111 th	S. 102/H.R. 1043, 112 th
Temporary deferral authority and early release of funds	President may make spending available for obligation or allow execution of new targeted tariff provision or targeted tax benefit earlier than specified if he determines that continuation of the deferral or of the suspension would not further the purposes of this act.	Not addressed.	President may make spending available for obligation or allow execution of the new direct spending or targeted tax benefit earlier than specified if he determines that continuation of the deferral or of the suspension would not further the purposes of this act.	President may make spending available for obligation earlier than specified if he determines that continued withholding or reduction is no longer needed for congressional consideration of the request; or on last day after which obligation of the funding can no longer be prudently accomplished, before its expiration.
Treatment of cancellations	Enactment of approval bill required before deadline to repeal earmarks or cancel targeted tariff or tax benefits; otherwise all provisions in the approval bill are null and void. Reports to Congress from Comptroller General about each special message and whether any earmark is not repealed or targeted benefit continues suspended after deferral authority has expired.	Any amount of discretionary budget authority proposed for rescission in a special message shall be made available for obligation on the day after the date on which either chamber defeats the approval measure accompanying the special message.	Any discretionary funds withheld from obligation must be made released within 45 calendar days from date Congress receives special message. Suspension of execution of direct spending or targeted tax benefit not to exceed 45 calendar days from receipt of special message.	Enactment of approval bill required before the deadline or OMB makes funding requested in the rescission message available for obligation.
Abuse of Proposed Cancellation Authority	Sense of the Congress provision that no President or other executive branch official should condition or threaten to condition the inclusion or exclusion of any proposed cancellation under this act to any Member's vote in Congress.	Not addressed.	Not addressed.	Not addressed.
Sunset provision	Yes, expires on December 31, 2014.	Yes, terminates in three years (date in 2012 when Congress adjourns sine die).	Yes, expires on December 31, 2010 (sic).	Yes, expires on December 31, 2015.

Some Possible Issues for Congress

There are some broader considerations related to expedited rescission measures that may be of interest to Congress. A variety of issues may be placed under the rubric of two general topics. The discussion which follows focuses first on expedited rescission procedures and possible budgetary savings and then turns to the possible effects of expedited rescission authority on the respective prerogatives of the legislative and executive branches.

Budgetary Savings

A central issue in assessing an expedited rescission proposal is the potential impact of the new device on the federal budget process and deficit reduction.

Some Figures Derived from Existing Data

Experience with the line item veto, generally viewed as a more powerful tool than expedited rescission, suggests that the amounts that might be saved by permitting the President to exercise expedited rescission authority could be relatively small. As an example, in 1988, the Administration released a study indicating what President Reagan would have item-vetoed in a continuing resolution for FY1988 had he the authority. Out of \$1.064 trillion in outlays, he would have eliminated \$336.1 million in appropriations, \$403.1 million in programs repealed or amended, and \$801 million in loan assets sales, for a total of \$1.540 billion.²⁹

As noted already, the LIVA of 1996 was overturned by the Supreme Court in June, 1998.³⁰ All together in FY1997, President Clinton issued 11 special messages containing 82 cancellations under the LIVA. The 38 cancellations in the Military Construction Appropriations bill, however, were rejected with the congressional override of the presidential veto of the bill disapproving the cancellations.³¹ The cancellation of the provision in the Treasury bill providing for an open season for federal employees to switch pension plans was held impermissible under the law, and a district court judge ordered its reinstatement early in 1998.³² So slightly more than half of the original cancellations (43 of 82) remained in effect when the Supreme Court overturned the LIVA in June 1998.

According to figures provided by the Congressional Budget Office (CBO), President Clinton's cancellations in FY1998 under the LIVA amounted to about \$355 million out of a total budget of \$1.7 trillion (less than 0.02%). Of this total, about \$30 million came from the 39 cancellations overturned, leaving a net budgetary effect for FY1998 of \$325 million. CBO estimated total savings over a five-year period from the FY1998 cancellations as less than \$600 million.³³

²⁹ H. Doc. No. 100-174, 100th Cong., 2d Sess. (1988).

³⁰ The LIVA was in effect from January 1, 1997, until the Supreme Court decision in *Clinton v. City of New York*, a period of less than 18 months.

³¹ On November 13, 1997, the President vetoed H.R. 2631, the first disapproval bill to reach his desk under the provisions of the 1996 law. The House voted to override on February 5, 1998 (347-69), and the Senate did likewise on February 25, 1998 (78-20); so the disapproval bill was enacted over the President's veto (P.L. 105-159).

³² U.S. District Court for the District of Columbia, Order by Judge Thomas Hogan regarding Civil Action No 97-2399, January 6, 1998. Judge Hogan's order found that the President lacked authority under the LIVA to make this cancellation, and so it was "invalid and without legal force and effect."

³³ Congressional Budget Office, "The Line Item Veto Act After One Year," CBO Memorandum, April 1998, pp. 12-13. Had the 39 cancellations that were no longer in force as of April 1998 been included, CBO estimated the total five-year

One might also review the record concerning amounts proposed for rescission under the ICA. From FY1974-FY2008, Presidents proposed slightly under 1200 rescissions, totaling a little over \$76 billion of which Congress approved roughly a third (\$25 billion). During this period of 35 years, Presidents have requested on average \$2.2 billion annually in rescissions, with \$78 million of the amount approved by Congress.³⁴ President George W. Bush submitted no requests during his eight years in office, nor has President Obama during his first two years in office.

Supporters of expedited rescission bills acknowledge that the device would not be a cure-all for deficit reduction. For example, in a 2010 press release following his introduction of the “Reduce Unnecessary Spending Act,” Representative Spratt mentioned that his “involvement with this idea [expedited rescission] dates back to the 1990s.” The statement further read, in part, “Since taking the majority in January 2007, House Democrats have worked together to move several measures promoting fiscal discipline.... Expedited rescission would add another instrument to this tool kit.”³⁵

At the Senate hearing in March 2011, a witness from Citizens Against Government Waste noted,

while discretionary spending is a serious problem, more needs to be done to limit the growth of entitlements and other government expenditures in order to bring the budget back into balance. However, that does not mean that expedited rescission authority, which would only tackle discretionary and non-entitlement spending, should be delayed until other budget problems are addressed or solved.³⁶

Deterrent Effect

Another consideration with respect to potential impact of expedited rescission authority for the President is a so-called “deterrent effect.” If a negative consequence can reasonably be anticipated following a particular action, one might refrain from ever taking the action. Representative Paul Ryan, chairman of the House Budget Committee in the 112th Congress, has characterized the threat of inclusion in a presidential rescission package as the “power of embarrassment and transparency.” OMB’s Acting Deputy Director, Jeffrey Liebman, referred to this potential effect in his statements at the Senate hearing in May and at the House hearing in June, 2010: “Knowing this [expedited rescission] procedure exists may also discourage policymakers from enacting such [unnecessary] spending in the first place.” In response to a question, he noted that OMB ultimately would gauge the effectiveness of expedited rescission procedures not by how many rescission packages were approved by Congress, but rather by preventing instances of wasteful spending from being included in appropriations laws.³⁷

At the Senate hearing in December 2009, testimony from the Executive Director of the National Governors Association spoke about the deterrent effect at the state level, where 43 governors have some form of the line item veto. Governors “believe that it is a very important tool for fiscal discipline. The mere threat of the veto is very powerful, particularly when the number that are overridden is so small.” The witness also said there is some evidence from the states, especially

savings as just under \$1 billion.

³⁴ CRS Report RL33869, *Rescission Actions Since 1974: Review and Assessment of the Record*, by Virginia A. McMurtry, p. 5.

³⁵ News Release by the House Budget Committee, May 24, 2010, available on the minority (Democratic) website, <http://democrats.budget.house.gov/PRArticle.aspx?NewsID=1757>.

³⁶ *Ibid.*, statement of Thomas A. Schatz, p. 4.

³⁷ In his prepared statement, Dr. Liebman noted, “While recent administrations have seen between 15 and 20 percent of their proposed discretionary cuts approved by Congress, we worked with Congress to enact 60 percent of proposed discretionary cuts for FY2010 [from a total of roughly \$20 billion].”

during times of economic stress, that the line item “does in fact save money.” For example, in Missouri during FY2007,

Governor Nixon has used the veto 50 times all of which have had budget impacts and totaled about \$105 million on a revenue base of \$8 billion. In good economic times the line item veto is used more when the governor is actually opposed to the policy that underlies the appropriations. During hard fiscal times it is often used to eliminate low priority items.³⁸

The impact of earmark disclosure arguably has similarities to increased attention to particular provisions in appropriation measures included as part in a package of rescissions subject to expedited procedures in Congress. Both the House and the Senate established new earmark transparency procedures in 2007.³⁹ An analysis of data in the requisite earmark disclosure lists, typically included in the explanatory statement from a conference committee, found that in the 12 regular appropriations, the “number and value of Member-only earmarks decreased since FY2008, from 11,117 earmarks worth \$12.5 billion in FY2008, to 9,281 earmarks worth \$10.2 billion in FY2010, down 17% by number and 19% by value.”⁴⁰

The scope of the deterrent effect ultimately depends on political calculations by each Member of Congress. If lawmakers decide that a project is of value to their district or state and will be appreciated by their constituents, they arguably will not be deterred by the prospect of a President singling out their project for a rescission bill. From this perspective the President’s action may serve to highlight their efforts to provide assistance to their district or state. The availability of expedited rescission authority to the President might encourage lawmakers to add more specified projects than is ordinarily the case. Instead of Congress placing needed constraints on projects and earmarks, lawmakers could shift more of that task to the President, by anticipating that some of the less justified congressional add-ons would be included in a rescission package that might be approved by Congress under the expedited procedures.

Implementation and Impact

A fundamental issue with regard to potential budgetary savings resulting from expedited rescission procedures concerns the implementation process. Some are skeptical regarding any budgetary savings resulting from expedited rescission procedures, since the process would become a component of House and Senate rules. This status may raise concerns about effectuation of expedited rescission procedures. Will the intended outcome—an up or down vote on eligible rescission requests from the President—actually occur? Chamber rules provided in statute carry over from one Congress to the next; other rules may need to be approved anew by each Congress to continue in existence. A chamber may amend its rules at any time, however. Rules of the House and Senate are enforced by Members making motions pursuant to them.

³⁸ Statement of Raymond C. Scheppach, Ph.D, before the Senate Subcommittee on Financial Management et al., on December 16, 2009.

³⁹The spending earmark definitions in House Rule XXI, clause 9, and Senate Rule XLIV are identical, except the identification of earmark requesters. A spending earmark is a provision in legislation or report language⁸ that meets specific criteria. First, the provision or language is primarily included at the request of a Member. Second, the provision or language provides, authorizes, or recommends a specific amount of spending authority for certain purposes to an entity, or to a specific state, locality, or congressional district. The purposes are a contract, grant, loan, loan guarantee, loan authority, or other expenditure. Finally, any of the above spending set asides that are selected through a statutory or administrative formula-driven or competitive-award process are excluded. For further discussion of congressional earmarks, see CRS Report RL34462, *House and Senate Procedural Rules Concerning Earmark Disclosure*, by Sandy Streeter.

⁴⁰ CRS Report R40976, *Earmarks Disclosed by Congress: FY2008-FY2010 Regular Appropriations Bills*, by Carol Hardy Vincent and Jim Monke.

While chamber rules lack the force of law, they may nonetheless be sufficiently heeded and respected in congressional deliberations as to have considerable impact.

For example, the congressional budget resolution is based on chamber rules.⁴¹ Although the budget resolution is not legally binding, it has come to play a central role in the congressional budget process. In the form of a concurrent resolution, the budget resolution “represents an agreement between the House and Senate that establishes budget priorities, and defines the parameters for all subsequent budgetary actions.”⁴² While deadlines have been frequently missed, in the 36 years since the inception of the congressional budget process in 1974, Congress has adopted at least one budget resolution in all but five years.⁴³

Breadth of Coverage

The potential savings from expedited rescission also would depend upon the breadth of coverage granted to the President. As indicated back in **Table 1**, the Administration bill would apply to funding of new spending and obligation limits, except to the extent that the funding is provided for entitlement law. The OMB Deputy Director, in response to a hearing question, stated that this language was chosen “to prevent a potential loop hole” of excluding de facto spending provisions found in authorization bills (which would be off limits for inclusion in a President’s special rescission package subject to expedited procedures).

Some would prefer that the expanded authority for the President be more inclusive, covering entitlement spending and limited tax benefits, along with discretionary budget authority. The annual total for discretionary spending according to OMB’s current services projections for FY2011 (\$1.5 trillion) is considerably less than that for mandatory programs (\$2.1 trillion).⁴⁴ The total for only the 10 largest tax benefits (expenditures) for FY2011 has been projected at \$642.7 billion.⁴⁵

As an example of such expanded coverage, the Line Item Veto Act of 1996 applied to new items of direct spending. Also subject to LIVA procedures were targeted tax benefits, or revenue-losing measures with 100 or less beneficiaries, as identified by the Joint Committee on Taxation. In the 109th Congress, H.R. 4890 as introduced retained the definition of targeted tax benefit as affecting 100 or fewer beneficiaries, but would have allowed the President to identify the provisions by default. The House bill, reported as amended and then passed by the full chamber, narrowed the definition of a targeted tax benefit to a revenue-losing measure affecting a single beneficiary, with the chairs of the Ways and Means and Finance Committees to identify such provisions. Supporters of the substitute version in 2006 suggested that it would treat targeted tax benefits

⁴¹ See Title III of the Congressional Budget Act of 1974, P.L. 103-344, 88 Stat. 306.

⁴² CRS Report RS20095, *The Congressional Budget Process: A Brief Overview*, by James V. Saturno.

⁴³ “In the absence of an agreed-upon budget resolution, the House (for FY1999, FY2003, FY2005, FY2007, and FY2011) and Senate (for FY1999, FY2005, and FY2007) each have agreed to ‘deeming resolution’ provisions for budget enforcement purposes.” CRS Report RL30297, *Congressional Budget Resolutions: Historical Information*, by Bill Heniff Jr. and Justin Murray.

⁴⁴ Office of Management and Budget, *Analytical Perspectives Budget of the U.S. Government Fiscal Year 2011*, Washington, DC, p. 393, <http://www.whitehouse.gov/omb/budget/fy2011/assets/receipts.pdf> 2010.

⁴⁵ Total calculated for 10 largest. Chapter on “Tax Expenditures” in the *Analytical Perspectives* volume does not provide a grand total for tax expenditures, due to the baseline assumption that other parts of the Tax Code would remain unchanged. “The estimates would be different if tax expenditure were changed simultaneously because of the potential interaction among provisions.” pp. 207, 220, <http://www.whitehouse.gov/omb/budget/fy2011/assets/receipts.pdf>.

comparably to earmarks in appropriations bills. Critics countered that the new definition was too narrow, and that few tax benefits would be subject to cancellation.

At the House hearing in June 2010, the Acting Deputy Director of OMB said, in response to questions, that he thought it would be “very difficult” to bring entitlement spending under the Administration bill, because such provisions generally were not in the form of a dollar amount, but rather entailed more extended policy language. Subjecting limited tax benefits to expedited rescission, according to Dr. Liebman, would be “even more difficult,” due to interactions between the tax expenditures provisions and other parts of the revenue code. On the other hand, one might revisit the definitions in the LIVA of 1996 for “new item of direct spending” and “targeted tax benefits,” and consider their practicability for an expedited rescission measure.⁴⁶

Finally, some have suggested that rather than leading to budgetary savings, the availability of expedited rescission authority could potentially increase spending under some circumstances. An Administration might agree not to include particular programs in a rescission package subject to expedited procedures if a Member of Congress agreed to support a spending program initiated by the President. In testimony before the Senate Budget Committee in 2006, Donald Marron, Acting Director of CBO, said with respect to expedited rescission measures, “Congress might accommodate some of the President’s priorities in exchange for a pledge not to propose rescission of certain provisions, thereby increasing total spending.”⁴⁷

Prerogatives of the Legislative and Executive Branches

Constitutionality

As noted already, the Supreme Court overturned the LIVA with its enhanced rescission framework in the case of *Clinton v. City of New York* in 1998. By a 6-3 vote the Court held that the LIVA violated the Presentment Clause in the Constitution (found in Article I, Section 7, clause 2), by allowing the President to cancel provisions of enacted law.

In the three hearings on expedited rescission held in the 111th Congress, witnesses generally agreed that the expedited rescission measures under consideration would have avoided the constitutional issues found in the LIVA. For example, Todd Tatelman, a CRS legislative attorney, testified that proposals such as S. 907 and S. 524 in the 111th Congress, which would have established expedited procedure for congressional consideration of certain rescissions recommended by the President, but still would have required passage of a bill or joint resolution and presentment to the President, “appear consistent with Article I, §7 and, therefore, arguably are not susceptible to the constitutional analysis that fated the Line Item Veto Act.”⁴⁸ Mr. Tatelman noted that other constitutional questions may remain relating to expedited rescission measures.⁴⁹ At the Senate hearing in March 2011, Mr. Tatelman again appeared and assessed the

⁴⁶ Senator Kerry reintroduced the Expedited Budget Item Veto Act in the 111th Congress as S. 3423. It was previously introduced in the 109th Congress and would have provided for expedited consideration of certain proposed cancellations of appropriations, new direct spending, and limited tax provision (i.e., coverage similar to that seen in the LIVA).

⁴⁷ “CBO’s Comments on S. 2381, the Legislative Line Item Veto Act of 2006,” before the Committee on the Budget, United States Senate, May 2, 2006.

⁴⁸ Statement of Todd Tatelman before the Senate Subcommittee on Federal Financial Management at al., December 16, 2009, p. 11, http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=34e3c205-9016-4269-be41-a27ec7e90a8c.

⁴⁹ Ibid., p. 11.

constitutionality of S. 102, the Reduce Unnecessary Spending Act of 2011, concluding that S. 102 “which relies on expedited procedures for congressional consideration. but nevertheless would require the passage of a bill or joint resolution and presentment to the President” also appeared to avoid the constitutional problem with the 1996 law.⁵⁰ However, there remain other possible constitutional questions relating to expedited rescission: “These include the lack of authority to legally bind future congresses to act on Presidential rescission requests, as well as the possibility that authorized periods of executive deferral or impoundment may be interpreted to be a violation of the doctrine of separation of powers.”⁵¹

In his opening statement at the hearing of the Senate Subcommittee on the Constitution in May 2010, Chairman Feingold noted, “While we seek to find ways to support our goal of cutting wasteful spending, it is essential that any new budget tools we create be constitutional.”

The review of the Administration’s expedited rescission proposal in the FY2012 budget submission suggested that the proposal is “fundamentally different” from the Line Item Veto Act of 1996, since under the proposal, Congress, “which is empowered to set its own rules, changes those rules under which it considers rescission packages proposed by the President—using well-established fast-track procedures.”⁵²

Some observers have pointed out that at a congressional hearing on a measure such as expedited rescission, it is insufficient to predict whether the measure will pass constitutional muster. Rather,

The judiciary is not entrusted to protect the legislative interests of Congress. Lawmakers must do that. They take an oath to support and defend the Constitution, which means more than satisfying judicial tests and standards. They are expected to protect the powers of their own branch to safeguard the system of checks and balances.⁵³

At the hearing in March 2011, Senator Levin said that in his view, S. 102 (incorporating the Administration’s expedited rescission proposal) probably was not unconstitutional. It would, however, relinquish some of Congress’s power of the purse to the President, which was a serious matter. Senator Levin then invoked the memory of the late Senator Robert Byrd, and observed that Senator Byrd “worried about things like this”—Congress granting enhanced power to the executive branch.⁵⁴

Priorities of Federal Spending

Aside from modest savings, some suggest that the impact of granting special rescission authority to the President with expedited procedures may well be felt in giving preference to the President’s spending priorities over those enacted by Congress. At the state level, a number of studies indicate that when governors use their item veto authority, the results favor executive priorities over legislative priorities.⁵⁵

⁵⁰ Statement available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=8cf2de4b-4c39-46aa-8ee4-7c7262a0783e.

⁵¹ Ibid, p. 11.

⁵² Office of Management and Budget, *Fiscal Year 2012 Analytical Perspectives, Budget of the U.S. Government*, Washington, DC: GPO, 2011, pp. 156-157.

⁵³ Louis Fisher, “Congress, Don’t Cede Budgetary Power to the President,” *Roll Call*, January 19, 2010, p. 4.

⁵⁴ Webcast of the hearing may be accessed from the Homeland Security and Governmental Affairs website, <http://www.senate.gov/fplayers/I2009/urlPlayer.cfm?fn=govtaff031511&st=615&dur=7740>.

⁵⁵ U.S. Congress, House Committee on Rules, *Item Veto: State Experience and Its Application to the Federal Situation*, committee print, 99th Cong., 2nd sess., December 1986 (Washington: GPO, 1986).

Testimony at congressional hearings over the years has lent credence to this position. For example, in 1995, during hearings on the Line Item Veto Act, Robert Reischauer, at that time serving as Director of the Congressional Budget Office, agreed that the item veto would not produce much in savings. The more important impact would be in giving presidential spending a preference over congressional spending. Evidence at the state level, he said, “suggests that the item veto has not been used primarily to hold down overall State spending, but rather it has been used by governors to substitute their priorities for those of the legislatures.” Experience at the national level convinced Dr. Reischauer that Presidents would seek item-veto authority to direct greater resources to their own spending agendas.⁵⁶ Similarly, in December 2009, the witness from GAO concluded her testimony before a Senate subcommittee by stating, “In summary ... we believe that 35 years of experience show that the rescission process as designed [in the ICA] has been used by Presidents to advance their own priorities for spending cuts.”⁵⁷

In the years since 1974, however, there also have been some instances when Congress reasserted legislative priorities over those sought by the President via rescission messages. During the presidential election year of 1992, the use of rescissions became a controversial and highly partisan political issue to an extent not seen since the conflicts of the Nixon Administration, leading up to the enactment of the Impoundment Control Act.⁵⁸ Arguably in apparent anticipation of the upcoming elections, President George H.W. Bush submitted a plethora of rescission requests, in an apparent effort to secure partisan political gain vis-a-vis the Congress, where both chambers were controlled by the Democratic Party. Specifically, during the first four months of calendar year 1992, the President requested 128 rescissions, totaling almost \$7.9 billion, while reportedly attempting to portray the Democratic-Party-controlled Congress as more interested in securing domestic “pork” projects for their constituents than in reducing the budget deficit. Over \$7 billion of these proposed rescissions affected the Defense Department, mainly for weapons programs that the Administration wanted to terminate or items that Congress added to earlier defense budgets. Many of the nondefense rescissions were for small earmarked projects, added by Congress.⁵⁹

In response to the four packages of rescissions requested by President Bush, in April 1992 the House and Senate Appropriations Committees devised their own alternative packages and reported separate measures, each accepting some rescissions proposed by the President, rejecting others, and providing alternative spending cuts.⁶⁰ A conference version with an \$8.2 billion package of rescissions was signed into law on June 4, 1992 (P.L. 102-298). Although the conference agreement contained over \$7 billion in defense funds, only about \$1.7 billion of that total came from programs that the Administration had wanted to rescind. In toto, the law

⁵⁶ U.S. Congress, Senate Committee on Governmental Affairs and House Committee on Government Reform, *Line Item Veto*, joint hearings, 104th Cong., 2nd sess., 1995, p. 62.

⁵⁷ U.S. Government Accountability Office, *Impoundment Control Act: Use and Impact of Rescission Procedures*, GAO-10-320T, December 16, 2009, p. 8.

⁵⁸ See CRS Issue Brief IB92077, *Rescission of Funds for FY1992: Presidential Proposals and Congressional Actions*, Virginia A. McMurtry, Coordinator (out of print but available to congressional clients from author).

⁵⁹ For further discussion about this rescission confrontation, see Louis Fisher, *Congressional Abdication on War and Spending* (College Station, TX: Texas A&M University Press, 2000), pp. 145-146.

⁶⁰ See U.S. Congress, House Committee on Appropriations, *Rescinding Certain Budget Authority, and for other purposes*, report to accompany H.R. 4990, 102nd Cong., 2nd sess., May 1992, H.Rept. 102-505 (Washington: GPO, 1992); and U.S. Congress, Senate Committee on Appropriations, *Rescissions Bill, 1992*, report to accompany S. 2403, 102nd Cong., 2nd sess., May 1992, S.Rept. 102-274 (Washington: GPO, 1992).

approved less than \$2.1 billion of the rescissions requested by President Bush, but added more than \$6 billion in congressionally initiated cuts.⁶¹

The enactment of a rescissions disapproval bill in 1997 pursuant to the LIVA of 1996, by overriding President Clinton's veto by a two-thirds majority in both chambers, may be contrasted with the relative ease of rejecting a President's package of rescission requests by simple majority vote in either the House or the Senate, under expedited procedures as provided in bills pending in the 111th Congress. President Clinton sought to cancel 38 projects in the military construction bill, estimating that this would save \$290 million over a five-year period. He identified three criteria that guided the selections:

1. the Defense Department concluded that the projects were not a priority at the time;
2. the projects did not make an immediate contribution to the housing, education, recreation, child care, health, or religious life of the military service; and
3. they would not have been built in FY1998 in any event.⁶²

These justifications came under substantial criticism. The Senate Appropriations Committee held hearings and took testimony from the Air Force, the Navy, and the Army. The military witnesses told the committee that the canceled projects were mission-essential and could be commenced in 1998.⁶³ The Senate voted 69 to 30 to disapprove the cancellations. The House voted 352 to 64 for the disapproval resolution. President Clinton vetoed the resolution, but a strong bipartisan majority overrode him by the necessary two-thirds margin. The vote was 78 to 20 in the Senate and 347 to 69 in the House.⁶⁴

Despite instances when Congress has effectively reasserted legislative priorities over presidential rescission efforts, critics of expanding rescission authority for the President beyond that provided in the ICA may counter that spending priorities are properly established through the regular legislative process, with the enactment of appropriations measures. In contrast, expedited rescission would allow a President to compile a list of projects previously enacted into law to be rescinded: federal spending priorities would thereby be changed by presidential rather than congressional initiative.⁶⁵ Senator Levin expressed a similar viewpoint regarding expedited rescission authority favoring executive branch spending preferences in lieu of congressional funding priorities at the Senate hearing held in March 2011.⁶⁶

In the context of cancelling funding previously provided in appropriations laws, one might consider the record concerning rescissions initiated by Congress. From FY1974-FY2008 Congress initiated 1,880 rescission actions totaling nearly \$197.1 billion.⁶⁷ While the ICA

⁶¹ See U.S. Congress, *Rescinding Certain Budget Authority, and for other purposes*, conference report to accompany H.R. 4990, 102nd Cong., 2nd sess., H.Rept. 102-530 (Washington: GPO, 1992).

⁶² See *Weekly Compilation of Presidential Documents*, vol. 33, (Washington: GPO, 1997), pp. 1501-02.

⁶³ Sen. Ted Stevens, "S. 1292, Disapproval Legislation," Senate Debate, *Congressional Record*, vol. 143, part 15 (October 7, 1997), pp. 22133-22134.

⁶⁴ P.L. 105-159, 112 Stat. 19, February 25, 1998.

⁶⁵ Louis Fisher, "Congress, Don't Cede Budgetary Power to President," *Roll Call*, January 19, 2010, p. 4.

⁶⁶ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, *Enhancing the President's Authority to Eliminate Wasteful Spending and Reduce the Budget Deficit*, 112th Cong., 1st sess., March 15, 2011, webcast available at <http://www.senate.gov/fplayers/I2009/urIPlayer.cfm?fn=govtaff031511&st=615&dur=7740>.

⁶⁷ Government Accountability Office, *Updated Rescission Statistics, Fiscal Years 1974-2008*, GAO Report B-310950.2, March 12, 2009.

provides for special rescission bills, most of the rescissions initiated by Congress have been contained in other appropriations measures.

The issue of needing objective criteria to be used by the executive branch in reviewing enacted appropriations measures for items to be included in a rescission package was discussed at some length during the 2010 hearing by the House Budget Committee on the Administration's expedited rescission proposal. Attention focused on the meaning of "unnecessary spending," which was not defined or mentioned in the Administration bill aside from the title. Some Members objected to the possible implication that somehow the executive branch knows how to spend federal monies better than does Congress, so that earmarks found in the President's budget are "necessary" whereas congressional earmarks are "unnecessary." Another interpretation might be that the President's budget pursues the public good instead of parochial interests advanced by Congress. Cosponsors of the bill, as well as those uncommitted, pressed for some statutory guidelines to reduce the current subjectivity of "unnecessary." The OMB spokesman acknowledged the Members' concern and promised to consider possible remedies.

At the Budget Committee hearing, some Members urged OMB to submit rescission requests under the existing framework in the Impoundment Control Act, suggesting that it could at least send a "useful signal" and help to build consensus on the need to reduce spending. The cumulative record of Presidents' success with rescission requests actually indicates some effectuation with the ICA process. Based on GAO figures, from enactment of the ICA through FY2008, Congress approved 39% of presidential rescission proposals and nearly 33% of the total dollar amount of budget authority included in the requested rescissions.⁶⁸

In response to the suggestions at the hearing to submit a rescission package under the ICA authority, however, Dr. Liebman replied that OMB decided instead to focus energy on the spending cuts and terminations that were included as a separate volume in the President's FY2011 budget submission and on advancing the expedited rescission proposal. OMB's position arguably implied that the submission of rescission requests under current procedures is so regularly ignored as to be a futile exercise.⁶⁹ Even if futile, in the sense of requested rescissions under the ICA framework not having attracted the necessary congressional support, a presidential initiative under the ICA might be interpreted as a constructive step in exerting leadership.

Relations Between the President and Congress

The issue of whose spending priorities prevail in implementation of federal appropriations laws relates to the larger subject of relations between the executive and legislative branches and separation-of-powers concerns. As noted already, various witnesses testifying on expedited rescission measures during hearings in the 111th and 112th Congresses attested to the apparent constitutionality of expedited rescission bills under consideration.

The apparent constitutionality of a measure, however, does not preclude concerns regarding political separation of powers issues. According to one news account, expedited rescission, unlike many other issues under consideration in the 111th Congress, had "both bipartisan support and

⁶⁸ GAO-10-320T, p. 5.

⁶⁹In an exchange with the OMB official, Representative Paul Ryan referred to the expedited provisions contained in section 1017 of the ICA, which require 1/5 of the chamber's members to support a motion to discharge, thereby initiating the fast-track process, and volunteered that he "could provide 88 Members" if needed.

opposition, with lawmakers often splitting between concern over Congress' 'power of the purse' and the need to do something to tackle the budget deficit."⁷⁰

Leaders of the appropriations committees in Congress, who have special concern in protecting the congressional power of the purse from possible encroachment by the executive branch, have been among the most vocal critics of granting the President expanded rescission authority. In 2006, when the House passed H.R. 4890 as amended, which would have granted expedited rescission authority to the President, both the chair and ranking minority member of the House Appropriations Committee voted against the bill.⁷¹ House Appropriations Chairman Jerry Lewis, in testifying before the House Rules Subcommittee on the Legislative and Budget Process on March 15, 2006, suggested that the expedited rescission proposal "would shift too much power over spending to the White House." He further stated, "For us to presume that all of the problems and spending and government will be solved primarily through transferring very serious authority to the executive branch and away from the legislative branch could be a very serious error."⁷²

In a statement for the floor debate, then ranking member Representative David Obey observed that Congress essentially has "three powers that combine to make it the greatest legislative body in the world." According to Obey's view, Congress had already largely ceded the ability to declare war and had "engaged in a pitiful amount of oversight and investigation" since 2001, with the only remaining power of the three being the power of the purse. "If members of this body want to diminish that [power of the purse] and further weaken the ability of the legislative body to do its job, then by all means vote for this bill. If you think it wouldn't be a good idea, then you ought to vote against it."⁷³ In the Senate, Appropriations Chairman Thad Cochran supported expedited rescission in 2006. The ranking member on Senate Appropriations, however, the late Senator Robert Byrd, who was generally expected to lead a filibuster if an expedited rescission measure had received Senate floor consideration in 2006, attacked the measure during a Senate hearing, "urging colleagues not to abdicate Congress' constitutional power of the purse."⁷⁴

The sensitivity of possibly impinging upon the constitutional power of the purse given to Congress seems implicitly acknowledged when advocates of expedited rescission authority for the President stress that their proposal would not diminish the prominent congressional role in federal spending decisions. For example, in an introductory statement accompanying S. 3474 in 2010 then Senator Feingold observed, "A line-item veto, properly structured and respectful of the constitutionally central role Congress plays, as this legislation is, can help us get back on track [to solving federal budgetary problems]."⁷⁵

At the Senate hearing held by the Subcommittee on the Constitution on May 26, 2010, the OMB Acting Deputy Director, stated on behalf of the Obama Administration, "In sum, the

⁷⁰ Jonathan Nicholson, "Prospects Dim for Fast-Track Rescission; House Vote Unlikely Before August Break," *Daily Report for Executives*, July 22, 2010, online version at http://news.bna.com/drln/DRLNWB/split_display.adp?fedfid=17525240&vname=dernotallissues&fn=17525240&jd=a0c3u5r1k3&split=0.

⁷¹ "Legislative Line Item Veto Act of 2006," House debate and recorded vote, *Congressional Record*, daily edition, vol. 152 (June 22, 2006), pp. H4433-41, H4467-93.

⁷² Rachel Van Dongen, "Top House Appropriator Takes Dim View of President's Plan for Line-Item Cuts," *CQ Today*, March 14, 2006, electronic version.

⁷³ House Committee on Appropriations, Democratic staff, "Obey Statement on Modified Line-Item Veto," Press Release, June 22, 2006.

⁷⁴ Steven T. Dennis, "GOP Chairmen Retool Bush's Rescission Plan," *CQ Today*, May 24, 2006, electronic version. In 1996, Senator Byrd was among those leading congressional opposition to the Line Item Veto Act.

⁷⁵ Sen. Russell Feingold, Statement accompanying introduction of S. 3474, *Congressional Record*, daily edition, June 9, 2010, p. S4749.

[Administration] proposal provides the President with important, but limited, powers that will allow the President and Congress to work together more effectively to eliminate unnecessary spending including earmarks.”⁷⁶ His statement then expanded upon this characterization:

The proposal has been crafted to preserve the constitutional balance of power between the President and Congress.... The Supreme Court found this [enhanced rescission given to the President under the LIVA] to violate the constitutional procedure for presenting a bill to the President.... The [Obama] Administration’s proposal is fundamentally different from [the 1996 law]. Under our proposal, Congress, which is empowered to set its own rules, changes those rules under which it considers rescission packages proposed by the President □ using well-established fast-track procedures.... In other words, our proposal does not expand the Presidential veto authority in any way.⁷⁷

On July 27, 2010, however, an article in the *New York Times* which focused on the departure of Peter Orszag as Director of OMB, presented a different view. According to journalist Matt Bai,

As much as anyone, Mr. Orszag has promoted and carried out an effort by the White House to pry away from Congress some of the responsibility for making hard decisions, especially when it comes to the budget. In the process, he has signaled that an Administration populated from the top down by Capitol Hill alumni is intent on altering the balance of power between the branches of government.⁷⁸

In addition to the expedited rescission proposal, the article pointed to Dr. Orszag as a strong proponent of the Medicare Independent Payment Advisory Board as a component of health care reform⁷⁹ and the National Commission on Fiscal Responsibility and Reform.⁸⁰ When considering the three proposals together, in Mr. Bai’s opinion, all of them “would seem to represent a clear exertion of executive power over the legislative branch.”⁸¹

Some opponents of expedited rescission measures further maintain that enactment of such procedures “would weaken Congress and make it more subservient to the presidential power ... even if courts were to find the process acceptable.” In fact, the very introduction of expedited rescission bills “would send a false signal that Congress cannot be trusted as fiscal guardian but that the President can.”⁸²

Some suggest that under expedited rescission, the President would gain stature at the expense of Congress, whatever the outcome of action on a President’s rescission package. Suppose the President submits a rescission package and Congress votes to approve it. The public arguably would have evidence that the appropriations bill passed by Congress contained wasteful spending, while the President acted as the taxpayers’ guardian. On the other hand, were Congress to reject the President’s rescission package, the President might again be viewed as the “winner,” in attempting to reduce federal expenditures, while Congress refused to support the effort.

⁷⁶ Statement of Jeffrey Liebman, <http://judiciary.senate.gov/pdf/5-26-10%20Liebman%20Testimony.pdf>, p. 2.

⁷⁷ Ibid., p. 3.

⁷⁸ Matt Bai, “For Budget Chief, Not All Farewells Are Fond,” *New York Times*, July 28, 2010, online version http://www.nytimes.com/2010/07/29/us/politics/29bai.html?_r=1&hp.

⁷⁹ Created by P.L. 111-148. For further background on the Board, see CRS Report R41196, *Medicare Provisions in the Patient Protection and Affordable Care Act (PPACA): Summary and Timeline*, coordinated by Patricia A. Davis.

⁸⁰ After the proposal for creation of a deficit commission by law failed in the Senate on January 26, 2010, President Obama issued E.O. 12837 on February 18, 2010, to establish a similar entity as a presidential advisory commission.

⁸¹ Matt Bai, “For Budget Chief, Not All Farewells Are Fond,” *New York Times*, July 28, 2010.

⁸² Fisher, “Congress, Don’t Cede Budgetary Power to the President,” *Roll Call*, January 19, 2010, p. 4.

As the statement from CBO concluded in 2006, in contemplating an expedited rescission measure, “Congress will have to weigh the potential for possibly modest budgetary benefits against possible drawbacks, which include a shift of power to the executive branch and effects on the legislative process.” The shift of power from Congress to the President “might change behavior in subtle ways that are difficult to predict and observe. For example, the fast-track process for Congressional consideration of rescission proposals would decrease Congressional leaders’ control over the legislative process by forcing the President’s requests to the top of the list of matters for consideration.”⁸³

GAO testimony in 2009 also “raised a few logistical concerns.” As noted in the discussion above comparing provisions found in selected expedited rescission bills, while details may vary, all would have required a prompt vote within a fixed period of time following transmittal of the President’s special message. According to GAO, “Any fixed time frame cedes some control over the congressional calendar to the President. In addition, a time frame such as 10 days would limit our ability to support congressional review of the President’s proposed rescissions.”⁸⁴

At the Senate hearing in March 2011, Senator Levin noted potential scheduling and procedural problems resulting from the three-day period for committee consideration of a President’s rescission package, as provided for in S. 102. In his view, such a short timeframe would not allow for adequate congressional review of the spending cuts proposed by the President.⁸⁵

At the June 2010 House hearing, advocates of expedited rescission called attention to the operation of existing fast-track provisions, which generally have not been perceived as a threat to congressional prerogatives. Dr. Liebman from OMB suggested that a President would be motivated not to abuse expedited rescission authority, since the House and Senate could always change their own rules. In other words, Congress would retain the means to protect the legislative branch and its power of the purse from any executive branch infringement by misuse of new rescission authority. In addition, as explained in OMB’s section-by-section analysis accompanying the Administration draft in May of 2010, “There is no method to provide an absolute guarantee of a [floor] vote [on the President’s rescission package], because all rules of the House and Senate are implemented by persons making the motions under the rules. If *no one* moves to consider a piece of legislation, it will not be considered.”⁸⁶

Finally, the sunset provisions contained in prior expedited rescission measures and illustrated by the deadline of December 31, 2015, as provided in S. 102/H.R. 1043 pending in the 112th Congress, would provide an ultimate safeguard for congressional prerogatives. The newly granted expedited rescission authority would terminate at a date certain absent action by Congress to extend the process.

⁸³ “CBO’s Comments on S. 2381, the Legislative Line Item Veto Act of 2006,” before the Committee on the Budget, United States Senate, May 2, 2006.

⁸⁴ GAO-10-320T, p. 8. Potential assistance to Congress from CBO and CRS would likewise be affected by the compressed time table for congressional action on a President’s rescission package.

⁸⁵ The committee provided a webcast of the hearing at <http://www.senate.gov/fplayers/I2009/urlPlayer.cfm?fn=govtaff031511&st=615&dur=7740>.

⁸⁶ Section-by-Section Analysis and Explanation of the “Reduce Unnecessary Spending Act of 2010,” May 24, 2010, available at http://www.whitehouse.gov/omb/assets/blog/Unnecessary_Spending_Act.pdf, p. 4.

Outlook

Expedited rescission proposals received notable attention, but varied levels of support in the 111th Congress. Hearings were held in both chambers, but no further action occurred.

Some have viewed greater involvement by the Obama Administration in advancing an expedited rescission measure as critical to prospects for enactment. Representative Minnick was quoted in a news article in accord with this perspective: If expedited rescission is to be passed, he stated in an interview in the summer of 2010, the Administration will have “to get behind it [expedited rescission bill] and indicate it’s a priority.”⁸⁷ In the budget for FY2012, transmitted to Congress on February 7, 2011, President Obama again endorsed expedited rescission procedures, specifically requesting for Congress to enact the Administration’s proposal transmitted in the spring of 2010. It remains to be seen to what extent the Obama Administration may become more actively engaged in promoting enactment of such an expedited rescission measure in the 112th Congress.

Likewise, time will tell whether an expedited rescission measure is reported favorably from committee in the 112th Congress, and whether subsequent floor action occurs. At the Senate hearing on expedited rescission held in March 2011, Senator Carper observed that expedited rescission provisions, as found in S. 102, may be offered as an amendment to a must-pass measure, such as one raising the statutory debt limit or providing appropriations for FY2012.

The author of this report concluded a statement before the Senate Subcommittee on Financial Management on March 15, 2011, by noting: “It remains an open question whether providing the President with expedited rescission authority would increase the employment or effectiveness of the rescission tool in reducing unnecessary spending.”⁸⁸ One might suggest that it also remains an open question as to what impact expedited rescission authority for the President might ultimately have on respective prerogatives of the legislative and executive branches in the federal budget process.

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⁸⁷ Jonathan Nickolson, “Prospects Dim for Fast-Track Rescission: House Vote Unlikely Before August Break,” *Daily Report for Executives*, July 22, 2010.

⁸⁸ Statement of Virginia McMurtry, p. 16, available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=8cf2de4b-4c39-46aa-8ee4-7c7262a0783e.

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